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# State of Utah

DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL, GAS AND MINING

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801-538-5340

April 14, 1992

## CERTIFIED RETURN RECEIPT P 074 979 208

Mr. Allen Childs  
Genwal Coal Company  
P.O. Box 1201  
Huntington, Utah 84528

Dear Mr. Childs:

Re: Proposed Assessment for State Violation No. N92-37-2-1, Genwal Coal Company, Crandall Canyon Mine, ACT/015/032, Folder #5, Emery County, Utah

The undersigned has been appointed by the Board of Oil, Gas and Mining as the Assessment Officer for assessing penalties under R614-401.

Enclosed is the proposed civil penalty assessment for the above-referenced violation. The violation was issued by Division Inspector, Priscilla W. Burton on March 11, 1992. Rule R614-401-600 et. sec. has been utilized to formulate the proposed penalty. By these rules, any written information which was submitted by you or your agent, within fifteen (15) days of receipt of the Notice of Violation, has been considered in determining the facts surrounding the violation and the amount of penalty.

Under R614-401-700, there are two informal appeal options available to you:

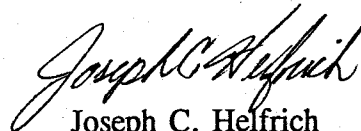
1. If you wish to informally appeal the fact of this violation, you should file a written request for an Informal Conference within 30 days of receipt of this letter. This conference will be conducted by the Division Director. This Informal Conference is distinct from the Assessment Conference regarding the proposed penalty.
2. If you wish to review the proposed penalty assessment, you should file a written request for an Assessment Conference within 30 days of receipt of this

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letter. If you are also requesting a review of the fact of violation, as noted in paragraph 1, the Assessment Conference will be scheduled immediately following that review.

**If a timely request for review is not made, the fact of violation will stand, the proposed penalty(ies) will become final, and the penalty(ies) will be due and payable within thirty (30) days of the proposed assessment. Please remit payment to the Division, mail c/o Vicki Bailey.**

Sincerely,



Joseph C. Helfrich  
Assessment Officer

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Enclosure

cc: Bernie Freeman, OSM

**WORKSHEET FOR ASSESSMENT OF PENALTIES  
UTAH DIVISION OF OIL, GAS AND MINING**

COMPANY/MINE Genwal Coal Co/Crandall Canyon MineNOV #N92-37-2-1PERMIT # ACT/015/032VIOLATION 1 OF 1ASSESSMENT DATE 04/13/92ASSESSMENT OFFICER Joseph C. Helfrich**I. HISTORY MAX 25 PTS**

- A. Are there previous violations which are not pending or vacated, which fall within 1 year of today's date?

ASSESSMENT DATE 04/13/92EFFECTIVE ONE YEAR TO DATE 04/13/91**PREVIOUS VIOLATIONS****EFFECTIVE DATE****POINTS**N91-37-3-12/13/921N91-37-4-12/13/921N91-15-2-31/ 2/923N91-13-1-13/27/921

1 point for each past violation, up to one year;  
5 points for each past violation in a CO, up to one year;  
No pending notices shall be counted.

**TOTAL HISTORY POINTS** 6**II. SERIOUSNESS (either A or B)**

**NOTE:** For assignment of points in Parts II and III, the following applies. Based on the facts supplied by the inspector, the Assessment Officer will determine within which category, the Assessment Officer will adjust the points up or down, utilizing the inspector's and operator's statements as guiding documents.

Is this an Event (A) or Hindrance (B) violation? Hindrance**A. Event Violations Max 45 PTS**

1. What is the event which the violated standard was designed to prevent? \_\_\_\_\_
2. What is the probability of the occurrence of the event which a violated standard was designed to prevent? \_\_\_\_\_

... PROBABILITY	RANGE
... None	0
... Unlikely	1-9
... Likely	10-19
... Occurred	20

ASSIGN PROBABILITY OF OCCURRENCE POINTS \_\_\_\_

PROVIDE AN EXPLANATION OF POINTS

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3. What is the extent of actual or potential damage?

RANGE 0 - 25\*

\*In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

ASSIGN DAMAGE POINTS \_\_\_\_

PROVIDE AN EXPLANATION OF POINTS

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B. Hindrance Violations MAX 25 PTS

1. Is this a potential or actual hindrance to enforcement? Potential

RANGE 0 - 25

Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

ASSIGN HINDRANCE POINTS 12

PROVIDE AN EXPLANATION OF POINTS

The inspector's statement revealed that updated legal/financial information was not found in Chapter 2 of the MRP during the inspection of March 11, 1992, as required by the transfer of lease assignments which occurred prior to July of 1991. See attached inspector's statement.

TOTAL SERIOUSNESS POINTS (A or B) 12

**III. NEGLIGENCE MAX 30 PTS**

- A. Was this an inadvertent violation which was unavoidable by the exercise of reasonable care? **IF SO - NO NEGLIGENCE;**  
 OR Was this a failure of a permittee to prevent the occurrence of a violation due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation due to the same? **IF SO - NEGLIGENCE;**  
 OR Was this violation the result of reckless, knowing, or intentional conduct? **IF SO - GREATER DEGREE OF FAULT THAN NEGLIGENCE.**

... No Negligence	0
... Negligence	1-15
... Greater Degree of Fault	16-30

STATE DEGREE OF NEGLIGENCE Greater Degree of Fault

ASSIGN NEGLIGENCE POINTS 18

PROVIDE AN EXPLANATION OF POINTS

See attached inspector's statement.

**IV. GOOD FAITH MAX 20 PTS. (EITHER A or B) (Does not apply to violations requiring no abatement measures.)**

- A. Did the operator have onsite the resources necessary to achieve compliance of the violated standard within the permit area?  
 ... **IF SO - EASY ABATEMENT**  
 Easy Abatement Situation  
 ... **Immediate Compliance -11 to -20\***  
 ... Immediately following the issuance of the NOV)  
 ... **Rapid Compliance -1 to -10\***  
 ... (Permittee used diligence to abate the violation)  
 ... **Normal Compliance 0**  
 (Operator complied within the abatement period required)  
 (Operator complied with conditions and/or terms of approved Mining and Reclamation Plan)

\* Assign in upper or lower half of range depending on abatement occurring in 1st or 2nd half of abatement period.

- B. Did the permittee not have the resources at hand to achieve compliance OR does the situation require the submission of plans prior to physical activity to achieve compliance?

... IF SO - DIFFICULT ABATEMENT

Difficult Abatement Situation

- ... **Rapid Compliance** -11 to -20\*  
(Permittee used diligence to abate the violation)
- ... **Normal Compliance** -1 to -10\*  
(Operator complied within the abatement period required)
- ... **Extended Compliance** 0  
(Permittee took minimal actions for abatement to stay within the limits of the NOV or the violated standard, or the plan submitted for abatement was incomplete)  
(Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan)

EASY OR DIFFICULT ABATEMENT? \_\_\_\_\_ ASSIGN GOOD FAITH POINTS 0

PROVIDE AN EXPLANATION OF POINTS

The permittee complied within the abatement period (i.e., abatement requirements received by Division one day prior to the abatement due date of April 10, 1992).

V. ASSESSMENT SUMMARY FOR N92-37-2-1

I.	TOTAL HISTORY POINTS	<u>6</u>
II.	TOTAL SERIOUSNESS POINTS	<u>12</u>
III.	TOTAL NEGLIGENCE POINTS	<u>18</u>
IV.	TOTAL GOOD FAITH POINTS	<u>0</u>
	TOTAL ASSESSED POINTS	<u>36</u>
	TOTAL ASSESSED FINE	<u>\$ 520.00</u>

jbe

HINDRANCE TO ENFORCEMENT VIOLATIONS  
INSPECTOR STATEMENT

- A. HINDRANCE TO ENFORCEMENT (Answer for hindrance violations only such as violations concerning record keeping, monitoring, plans and certification).

Describe how violation of this regulation actually\_\_ OR potentially X (check one) hindered enforcement by DOGM and/or the public and explain the circumstances.

*During the Complete inspection of 3/11/92, updated information was not found in Chapter 2 (legal/financial) of the MRP. The information was long overdue from Genwal as the transfer of lease assignments occurred prior to July of 1991. Updates of the surface and lease ownership map and related information in Chapter 2 of the MRP have not been available to other government offices or the Price Field Office.*

- B. DEGREE OF FAULT (Check the statements which apply to the violation and discuss).

- ( ) Was the violation not the fault of the operator (due to vandalism or an act of God), explain. Remember that the permittee is considered responsible for the actions of all persons working on the mine site.
- (x) Was the violation the result of not knowing about DOGM regulations, indifference to DOGM regulations or the result of lack of reasonable care, explain.
- ( ) If the actual or potential environmental harm or harm to the public should have been evident to a careful operator, describe the situation and what, if anything, the operator did to correct it prior to being cited.
- (x) Was the operator in violation of a specific permit condition?
- (x) Did the operator receive prior warning of noncompliance by State or Federal inspectors concerning this violation?
- ( ) Has DOGM or OSM cited the violation in the past? If so, give the

NOV/CO #  
VIOLATION #\_ of \_

dates and the type of warning or enforcement action taken.

Explanation

*A transfer of coal lease ownership occurred sometime in July and was reported in the publication "Coal Outlook," 7/29/91 (Exhibit A). No information was received by the Division in accordance with R645-303-300 prior to the transfer of lease ownership rights. At that time, the Division could not verify the requirements of R645-300-132.100 and the public was hindered from notification as required by R645-301-124.*

*Mr. Steve Demzak (Division Inspector) visited the Genwal Office on 8/9/91 to obtain information on the transfer of lease ownership. Genwal was informed at that time of their obligations to inform the Division prior to lease ownership transfer under R645-303-300, but no violations were written. The information obtained by Mr. Demzak (Exhibit B) was not in a form which could be inserted into the MRP.*

*Without Division approval of the transfer, Genwal published incorrect and confusing information concerning the transfer and assignment of leases in the "Sun Advocate" on 8/13/91 (Exhibit C). A revision to the public notification statements was required (Exhibit D) along with a request for a more formal submittal of the lease transfer information.*

*In response to the request for a formal submittal, Intermountain Power Agency (a party in the transfer) contracted with the law firm of LeBoeuf, Lamb, Leiby and MacRae to write a notification of transfer of lease assignment. I worked closely with the law firm in the ensuing four months to ensure that an accurate application package was produced. On November 26, 1991, the Division granted approval of the application for transfer of lease ownership (Exhibit E) and requested a revision of Chapter 2 of the MRP (in compliance with R645-301-110 through 114). The deadline for the submittal of the revised chapter 2 was given as December 26, 1991.*

C. GOOD FAITH

1. In order to receive good faith for compliance with an NOV or CO, the



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Inspector Statement  
Hindrance to Violations

NOV/CO #  
VIOLATION #\_ of \_

violation must have been abated before the abatement deadline. If you think this applies, describe how rapid compliance was achieved (give dates) and describe the measures the operator took to comply as rapidly as possible.

*The violation was written on 3/11/92. The abatement date is 4/11/92.*

2. Explain whether or not the operator had the necessary resources onsite to achieve compliance.

*All the information necessary to achieve compliance was provided in the application for permit transfer prepared by LeBoeuf, Lamb, Leiby and MacRae.*

3. Was the submission of plans prior to physical activity required by this NOV? Yes\_\_\_ No\_x\_ If Yes, explain.

3/16/92  
DATE

  
AUTHORIZED REPRESENTATIVE